

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

BRYAN DEANGELO AROMAYE §
§
§
VS. § C.A. NO. 6:24-cv-188-JCB
§
U.S. BANK TRUST NATIONAL §
ASSOCIATION, NOT IN ITS INDIVIDUAL §
CAPACITY, BUT SOLEY AS DELAWARE §
TRUSTEE FOR B4 RESIDENTIAL §
MORTGAGE TRUST §

**DEFENDANT'S AMENDED REQUEST FOR ENTRY OF DEFAULT AGAINST
PLAINTIFF ON DEFENDANT'S COUNTERCLAIMS**

Defendant/Counterclaimant, U.S. Bank Trust National Association, Not in its Individual Capacity, But Solely as Delaware Trustee for B4 Residential Mortgage Trust (“**Defendant**” or “**Trust**”) pursuant to Rule 55 of the Federal Rules of Civil Procedure, respectfully requests the Court Clerk to enter default against Plaintiff/Counter-defendant, Bryan Deangelo Aromaye (“**Plaintiff**”) on all of Defendant’s Counterclaims, and would respectfully show the Court as follows:

INTRODUCTION

1. On August 8, 2024, after Plaintiff filed suit against Defendant and others, Defendant filed its Original Counterclaims against Plaintiff who had made an appearance in this action by filing his Original Petition prior to removal to this Court. On August 8, 2024 Defendant’s Counterclaims were served on Plaintiff via regular mail and email after being filed in this pending action in which Plaintiff has appeared as a party. See Dkt. 8. On November 18, 2024 out of caution, Defendant again served Plaintiff with the Original Counterclaims via certified mail. Both the records of the United States Postal Service and a signed green card confirm that Plaintiff received a copy of the Counterclaims on November 21, 2024. See Exhibits 1 and 1-A.

Additionally, the Counterclaims have been on file in this action since August 8, 2024 and Plaintiff has been a party to this action since that time since he initiated this action.

2. Though properly served, Plaintiff has failed to file any responsive pleading to Defendant's Counterclaims. See Court's Dkt generally and Exhibit 1.

3. Defendant's time to respond to or otherwise defend against Defendants' Counterclaim expired at the latest no later than December 12, 2024, being the first business day following twenty-one days from service on Plaintiff of the Counterclaims by certified mail and confirmed delivery and receipt of the Counterclaims by Plaintiff, which occurred on November 21, 2024. See Exhibits 1 and 1-A.

4. Accordingly, Defendant is entitled to entry of default by the Clerk as to Plaintiff on Defendant's counterclaims.

NATURE AND STAGE OF PROCEEDING

5. On December 28, 2023 Plaintiff filed suit in state court against the Trust. The Trust has no record of being served with the Original Petition filed in state court. After filing its Answer, the Trust removed this case to Federal Court on May 28, 2024 based on both Federal Question and Diversity jurisdiction. See Dkt. 1. The jurisdiction of the Court has not been challenged by Plaintiff.

6. On July 8, 2024 the Court entered an Order requiring Plaintiff to amend his pleading in compliance with the Federal Rules of Civil Procedure by August 5, 2024. See Dkt. 5. On August 1, 2024, Plaintiff filed a document entitled "Plaintiff's Notice of Appearance and Motion to Join Necessary Parties and Motion to Quiet Title Action", which purports to be his live pleading in this action. See Dkt. 6 (the "Complaint"). On August 8, 2024 Fay and the Trust filed their Answers to the Complaint. See Dkt 7. On the same date, the Trust also filed its Counterclaims against Plaintiff, relating to one or more fraudulent documents filed by Plaintiff in the real property

records of Henderson County, Texas. See Dkt. 8. On August 30, 2024, RTL filed its Answer to the Complaint. See Dkt. 10. Plaintiff has not filed a responsive pleading to Defendant's Counterclaims despite being served with same by Certified Mail and while having already appeared in this action. See Exhibits 1, 1-A and the Court's Docket.

ARGUMENT

7. Rule 55(a) permits the clerk to enter default “[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend” and that failure is shown “by affidavit or otherwise.” Fed.R.Civ.P. 55(a); *N.Y. Life Ins. Co. v. Brown*, 84 F.3d 137, 141 (5th Cir. 1996); *Wiles, MD v. Racefab, Inc.*, No. 6:14cv661, 2015 WL 163999 (E.D. Tex. Jan. 12, 2015).

8. A defendant must serve an answer within 21 days after being served with the summons and complaint. Fed.R.Civ.P. 12(a)(1)(A)(i). Plaintiff was served with Defendant's Counterclaims on August 8, 2024 via email and regular mail while he was a party in this action and failed to timely file a responsive pleading. See Dkt. 8 and Court's Dkt. generally. Plaintiff was again served with Defendant's Counterclaims by certified mail on November 18, 2024 and received delivery of the subject Counterclaims on November 21, 2024 as confirmed by a signed green card and USPS tracking information. See Exhibits 1 and 1-A.

9. The Clerk should enter a default because Plaintiff failed to file a responsive pleading or otherwise defend within 21 days after the date of service. Fed.R.Civ.P. 55(a).

10. Defendant meets the procedural requirements for obtaining entry of default by the clerk.

WHEREFORE, Defendant, respectfully requests the clerk to enter a default against Plaintiff and in favor of Defendant on Defendant's pending counterclaims.

Respectfully submitted,

HIRSCH & WESTHEIMER, P.C.

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ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

On this 18th day of December 2024, I hereby certify that a true and correct copy of the foregoing document was served as follows:

Bryan Deangelo Eugene Aromaye Pro Se

610 Uptown Blvd., Suite 2000

Cedar Hill, Texas 75104

Via Regular Mail, CMRRR and Email

/s/ Michael F. Hord Jr.

Michael F. Hord Jr.